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SUPREME COURT, U.S.

No. 641

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

JEROME S. SPEVACK, *Petitioner,*

v.

LEWIS L. STRAUSS, ET AL., *Respondents*

PETITIONER'S REPLY TO BRIEF FOR RESPONDENTS IN OPPOSITION

CARLETON U. EDWARDS II,
1000 Vermont Ave., N. W.
Washington 5, D. C.

JOSEPH Y. HOUGHTON,
1317 F. St., N. W.
Washington 4, D. C.

BERNARD MARGOLIUS,
1000 Vermont Ave., N. W.
Washington 5, D. C.

Attorneys.

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Petitioner feels compelled to point out to the Court the following matters regarding Respondents' Brief in Opposition:

1. Respondents' Brief Contains Errors in the "Statement of the Case"

Aside from other errors which will be apparent from the more detailed statement in the Petition, Respondents' Brief at page 6 asserts that the A.E.C. "published" and "placed on library shelves" and made "available to the public" materials disclosing the new process here involved. These assertions were not properly established in that they were based only on inadmissible, incompetent affidavits (Petition, pages 10 and 22-23); and in that petitioner was denied

the right of cross examination and rebuttal. Petitioner's contentions in these respects were not reached or reviewed by the Court of Appeals.

2. Respondents' First Argument, on Jurisdiction, Is Based on False Premise and Evades Fundamentals

Argument (1) of said Brief, at page 9, inaccurately states that the relief sought is against respondents as officers and agents of the government. The facts are that the relief sought was and is to restrain respondents from doing *what they are not legally authorized to do as government agents,* and that the complaint alleged they proposed to act in excess of their legal authority, as pointed out at page 20, last paragraph, of the Petition. Based on their false premise respondents attempt to justify the dismissal below solely on form of pleading. Respondents evade the fundamentals: the right and duty of a court to look to the whole record to determine its jurisdiction, and to allow amendment where appropriate. *Norton* v. *Larney,* 1925, 266 U.S. 511, cited at Petition, p. 21.

3. Respondents' Second Argument, on Right to Amend, Is Misleading. The Court of Appeals Refused Amendment Because It Misapplied the Larson Case

Point 2 of said brief is inaccurate. The affidavits had no bearing on the question of sovereign immunity, and respondents cite no authority requiring amendment of a complaint at a time when the court has ruled that it is sufficient and that the court has jurisdiction.

The Court of Appeals obviously considered the *Larson* case controlling and therefore that amendment would be purposeless. By the same token, had the

Court of Appeals considered that the proposed amendments would have removed the instant case from the scope of *Larson*, it would have been compelled to permit amendment.

4. Respondents' Argument 3(a), on Authorization, in Effect Admits the Atomic Energy Act Does Not Give the Claimed Authority in the Field of Petitioner's Invention

Point 3(a) of said brief, last paragraph, admits that the authority of the respondents under the Atomic Energy Act is limited to alleged "atomic energy inventions". The new process here involved is not an "atomic energy invention" as defined in the Act. It does not fall within the class of inventions to which sections 11r, 11t, 151 and 152 of the Act[1] pertain. It is a process adapted for more economically producing "heavy water". Heavy water is used as a material of construction (just as steel, concrete, etc., are used) in building atomic reactors. But a process for producing heavy water is not a process for producing atomic energy.

It follows, therefore, that Respondents' entire argument as to the Respondents' authority is baseless.

It is further called to the attention of this Court that Respondents make no effort to dispute the argument advanced in the brief *Amicus Curiae* of the American Chemical Society that the property rights of inventors in their discoveries are limited only in the manner provided by the Act. A.C.S. Amicus brief, pages 5-9. Congress in a number of respects circumscribed and limited, in detail, the rights and obligations of inventors in the field covered

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[1] Quoted at Petition page 2a; A. C. S. Amicus pages 1a, 2a.

by the Act, but it did not authorize the action proposed to be taken by Respondents. The authorization relied upon by Respondents in their brief (at pages 10-11) relates only to the Respondents' power to *restrict* dissemination of certain information—it does not authorize them to publish information which otherwise they would have no right to publish.

5. Respondents' Argument 3(b), on Constitutionality, Is Specious and Not Supported by the Cited Cases

The contentions of Respondents in point 3(b) are specious:

(a) Their first contention is refuted by the principle that the setting forth of particular circumstances for which compensation is provided, with specificity, negatives Congressional intent to provide for compensation in other circumstances, or generally. The Respondents' own agency has ruled that "nothing in the act . . . would justify consideration of a claim for damages based upon publication of a disclosure made to the Commission", *Ex Parte Fulmer* cited in Petition, page 19, footnote 3. Also note the relevancy of the A.C.S. Amicus brief, end of page 7.

(b) The cases cited (Respondents' brief, page 12) do not support Respondents' second contention: in each of them, this Court stressed that it was conceded that the specific acts complained of specifically were authorized by valid Act of Congress and that a provision for compensation was present. Such is not the case here.

6. Respondents' Fifth Argument, on Mootness, Is Based on Mere Assumptions and Evades the Issues

Finally, at page 13, Respondents' argument employs a play upon the word "published" without defining the word as used, which tactic we believe misled the District Court. The argument is based on assumed fact, and assumed futility. It carefully avoids the issues set forth in questions 6 and 7 and discussed at pages 22-23 of the petition, as well as the fact that not only dissemination, but the territorial extent thereof, has bearing on the degree of mootness, and on the power of the Courts to grant at least partially effective relief.

CONCLUSION

We, therefore, submit that the brief for the respondents in opposition, by its weakness and evasions, far from showing that certiorari should be denied, actually supports the view that certiorari should be granted, as prayed by the petitioner and by the parties appearing as Amici Curiae.

Respectfully submitted,

CARLETON U. EDWARDS II,
JOSEPH Y. HOUGHTON,
BERNARD MARGOLIUS,
Attorneys.